

## Cost Participation in Research and Development Contracting



### Guiding Principles

- Cost participation allows costs and benefits to be shared by both the Government and contractors performing research, development, and/or demonstration projects under DOE prime contracts.
- Cost participation encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

[References: [Public Law 109-58](#), [Energy Policy Act of 2005](#), [FAR 35.003\(b\)](#), [DEAR 917.70](#)]

### 1.0 Summary of Latest Changes

This update: (1) combines Acquisition Guide Chapters 17.2, Cost Participation, and 35.2, Cost Sharing in Research and Development Contracting, (2) updates delegations of authority, (3) updates sample cost sharing language for inclusion in solicitations and contracts, and (4) includes administrative changes.

### 2.0 Discussion

This chapter supplements other more primary acquisition regulations and policies contained in the references above and should be considered in the context of those references. This chapter does not cover efforts and projects performed for the Department of Energy (DOE) by other Federal agencies.

2.1 **Energy Policy Act of 2005**. Section 988 of the Energy Policy Act (EPAct) of 2005 establishes Department-wide cost sharing requirements for most research, development, demonstration, and commercial application activities initiated after August 8, 2005. Some programs authorized in other sections of EPAct 2005 may have specific cost sharing requirements. The requirements of Section 988 supersede cost sharing requirements that have been contained in previous authorization and appropriations laws. Section 988 also provides guidance, in addition to the applicable cost principles, for determining allowable costs.

2.1.1 **Authority to Exclude Research and Development of a Basic or Fundamental Nature from Cost Sharing Requirements**. The authority in Sec 988(b)(2) has been delegated to the Under Secretary for Science and Energy in Delegation Order 00-006.00C.

2.1.2 The following authorities have been delegated to the Under Secretary for Science and Energy in Delegation Order 00-006.00C, and the Director of the Advanced Research Projects Agency – Energy (ARPA-E) in Delegation Order 00-038.00B:

- Authority to reduce or eliminate the cost sharing requirement for applied research and development [Sec 988(b)(3)]; and
- Authority to reduce the cost sharing requirement for demonstration and commercial application activities [Sec 988(c)(2)].

2.1.3 **Solicitation/Contract Requirements.** Contracting Officers must include the requisite cost sharing requirement (specifying dollar or percentage) and information in any solicitation and contract for research and development, demonstration, and/or commercial application programs and activities. The following is sample language. Contracting Officers may adjust the percentages based on Sec. 988:

- 20 percent of the total allowable costs for this research and development project shall be borne by the Contractor. The Department of Energy will reimburse the Contractor for the government's 80% share.
- 50 percent of the total allowable costs for this demonstration shall be borne by the Contractor. The Department of Energy will reimburse the Contractor for the government's 50% share.

The solicitation and contract should include appropriate provisions, clauses, and terms and conditions on cost allowability.

2.1.4 **Royalties.** Royalties should not be used to repay or recover the Federal share, but may be used as a reward for technology transfer activities.

2.2 **Forms of Cost Participation.** Cost participation may be in various forms or combinations which include, but are not limited to cash outlays; real property, or interest therein, needed for the project; personal property or services; cost matching; foregone fee; or other in-kind participation (see 2.4 below).

Cost participation may include the value of contributions of other non-Federal sources, provided the contributions were not previously obtained free of charge. The value of any noncash contribution is established by DOE after consultation with the contractor.

Cost participation may be accomplished by a contribution to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles of the

contract. Allowable costs which are absorbed by the contractor as its share of cost participation may not be charged directly or indirectly to the Federal Government under any other contract, financial assistance award, or other agreement.

**2.3 Third Party Provider of Cost Participation.** A contractor's cost participation may be provided by other companies or associations with which it has contractual arrangements to perform the project. However, the fact that a project is jointly funded, e.g., where DOE and an industry association fund a third party (the contractor), does not preclude the contracting officer from seeking, as appropriate, cost participation by the contractor.

The contracting officer must ensure that arrangements between DOE and non-Government organizations for jointly sharing the cost of projects performed by third party contractors provide that each party to the cost sharing agreement pay its share of program costs directly to the performing contractor. The DOE Chief Financial Officer, Headquarters, or designee, must approve any alternative arrangement in advance.

**2.4 In-kind Contributions.** In-kind contributions represent non-cash contributions provided by the performing contractor or a non-Federal third party who is participating with DOE in a co-sponsored project or contract. In-kind contributions may be in the form of personal property (equipment and supplies), real property (land and buildings) or services which are directly beneficial, specifically identifiable and necessary to performance of the project or program. DOE accepts in-kind contributions that are:

- Verifiable from the contractor's books and records;
- Necessary for the effective and efficient accomplishment of the project;
- Types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization;
- Not charged to the Federal Government under any contract, agreement or grant, unless specifically authorized by legislation; and
- Not included as contributions for any other Federal program.

**2.4.1 Value of Contractor In-kind Contributions.** In-kind contributions are not valued in excess of their fair market value. When the Government will receive title to donated land, buildings, equipment or supplies and the property is not fully consumed during performance of the co-sponsored project, the property's in-kind value is based on the contractor's booked cost (i.e., acquisition cost less depreciation, if any) at the time of donation.

In the event the booked costs reflect unrealistic values when compared to current market conditions, a more appropriate value is developed through an independent appraisal of the fair market value of the donated property or property in similar condition and circumstance.

To the extent required, the value of any property or services to be donated is established in accordance with generally accepted accounting policies and the appropriate Federal cost principles applicable to the contractor's organization.

2.4.2 Value of Non-Federal Third Party In-kind Contributions. Values should be reasonable and not exceed the fair market value of the item at the time of donation. Special treatment is given to the following types of third party in-kind donated items:

- Donated Employee Services

Employee services are valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the donated services require use of the same skills for which the employee is normally paid. Otherwise, the rate of pay, for valuation purposes, is consistent with the rates paid for similar work in the labor market in which the contractor competes for such skills.

- Volunteer Services

Rates used to value volunteered personal services of professional, clerical, or other individuals should be consistent with those regular rates paid by the contractor for similar work.

- Property

Values for personal or real property, or the use thereof, are dependent upon the donor's intended disposition of the property upon project completion. When title is donated at no cost to the Government or the property will be fully consumed during project performance, a reasonable value not in excess of the fair market value of the donated property, or comparable property in similar condition, is established provided the fair market value of land or buildings is established by an independent appraisal. When title is retained by the donor or acquired by the contractor, reasonable usage values not in excess of the fair rental value of the donated property or comparable property are established provided the fair rental value of donated space is established by an independent appraisal.

2.5 **Fee or Profit.** Fee or profit is not paid to the contractor under a cost participation contract. However, contracting officers should consider foregone fee or profit in establishing the degree of cost participation. Fee or profit is also not paid to any member of the proposing team having a substantial and direct interest in the project. Competitive subcontracts placed with the

prior written consent of the contracting officer and subcontracts for routine supplies and services are not covered by this prohibition.

2.6 **Level of Cost Participation.** Contractors are expected to contribute a reasonable amount of the total project cost to be covered under the contract (see EPCA 2005, Sec 988). The ratio of cost participation should correlate to the apparent advantages available to a contractor and the proximity of implementing commercialization. The extent to which a performing organization contributes to the cost of a project is taken into consideration in the allocation of patent rights under DOE's waiver policy.

The contracting officer, in consultation with the program office, establishes the desired levels of cost participation for a solicitation or a contractor by considering such factors as:

- The availability of the technology to a contractor's competitors;
- The risks involved in achieving commercial success;
- The length of time before the project is likely to be commercially successful;
- Improvements in the performer's future commercial competitive position;
- Disposition of property at project's end;
- Whether the results of the project are transferable to other parties with production capabilities, and the contractor would obtain patent or other property rights which could be sold or licensed;
- Whether the potential benefits will be lessened if the contractor lacks production or other capabilities with which to capitalize the results of the project; and
- Whether the performing organization lacks adequate non-Federal sources of funds to contribute to the effort.

2.7 **Best Practices.**

2.7.1 Contracting officers must ensure that contractors clearly understand the need to maintain an accounting system with records that adequately reflect the nature and extent of their cost contribution as well as those costs charged to DOE.

2.7.2 Financial proceeds from the sale of products resulting from a project must be appropriately recorded. These records are subject to audit by DOE.

2.7.3 Contracting officers must include disposition instructions in the contract for any property and equipment furnished or acquired during the project.